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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No.

2010-144

12 DAVID JOHN LOPEZ
13 1614 Larch Place
14 La Verne, CA 91750

A C C U S A T I O N

15 Registered Nurse License No. 613337

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
21 of Consumer Affairs.

22 2. On or about February 7, 2003, the Board of Registered Nursing issued Registered
23 Nurse License Number 613337 to David John Lopez (Respondent). The Registered Nurse
24 License was in full force and effect at all times relevant to the charges brought herein and will
25 expire on July 31, 2010, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2761 of the Code states in relevant part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct . . ."

6. Section 2762 of the Code states in relevant part:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

" . . . "

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7. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

8. Section 118 of the Code states in relevant part:

“ . . .

"(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

"(c) As used in this section, 'board' includes an individual who is authorized by any provision of this code to issue, suspend, or revoke a license, and 'license' includes 'certificate,' 'registration,' and 'permit.'"

DRUGS

9. Dilaudid, a brand name for hydromorphone, is a Schedule II controlled substance as designated by Health and Safety Code Section 11055(b)(1)(K) and is a dangerous drug pursuant to Business and Professions Code section 4022. Dilaudid is a narcotic analgesic prescribed for the relief of moderate to severe pain.

10. Morphine is a Schedule II controlled substance as designated by Health and Safety Code section 11055(b)(1)(M), and is a dangerous drug pursuant to Business and Professions Code section 4022.

11. Darvocet, a brand name for propoxyphene naphsylate and acetaminophen, is a Schedule IV controlled substance as designated by Health and Safety Code section 11057(c), and is a dangerous drug pursuant to Business and Professions Code section 4022.

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1 **COST RECOVERY**

2 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licensee found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct – Use of Dangerous Drugs)**

8 13. Respondent is subject to disciplinary action under Code section 2761, subdivision (a),
9 on the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (b), in
10 that Respondent used dangerous drugs to an extent or in a manner dangerous or injurious to
11 himself or others or to the extent that such use impairs his ability to conduct with safety to the
12 public the practice authorized by his license. The circumstances are as follows:

13 14. On or about January 3, 2009, Respondent was employed as a registered nurse at
14 Chino Valley Medical Center. Respondent admitted to diverting Dilaudid and morphine from his
15 employer, and using the drugs at home. Respondent further admitted to being an addict for more
16 than a year, and that his use was killing him.

17 15. On or about January 23, 2009, Respondent voluntarily entered the Board's diversion
18 program.

19 16. While in diversion, on or about July 6, 2009, Respondent tested positive for Darvocet.
20 Respondent admitted that he had taken Darvocet on Friday that week. The Diversion Evaluation
21 Committee mandated that Respondent: enter a 30 day inpatient drug treatment facility by July
22 24, 2009; be suspended from the practice of nursing until further direction; attend and document
23 90 12-step meetings in 90 days, seven days a week, including one Big Book, one 12 by 12
24 meeting, one Men's meeting, and one CODA meeting per week; continue working on the 12-step
25 process with his sponsor as well as process the July 6, 2009 relapse; attend weekly Nurse Support
26 Group; call or log-in daily to FirstLab for random body fluid testing; and complete 15 classroom
27 Continuing Education units in chemical dependency prior to completion of the Diversion
28 Program. Respondent agreed to these terms.

1 17. On or about July 31, 2009, Respondent was terminated from the Board's Diversion
2 Program as a public safety risk. The decision to terminate Respondent was based on the fact that
3 Respondent failed to call FirstLab and be tested, he failed to communicate or return calls from his
4 Diversion case management worker, he left Sober Living without DEC approval, and failed to
5 send MAXIMUS a June 2009 Mandatory Self Report, and Attendance Card.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct – Illegally Obtaining and Self-Administering Dangerous Drugs)**

8 18. Respondent is subject to disciplinary action under Code section 2761, subdivision (a),
9 on the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (a), in
10 that Respondent illegally obtained and self-administered dangerous drugs as set forth in
11 paragraphs 14 through 17, above, which are incorporated here by this reference.

12 **PRAYER**


13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
14 and that following the hearing, the Board of Registered Nursing issue a decision:

15 1. Revoking or suspending Registered Nurse License Number 613337 issued to David
16 John Lopez;

17 2. Ordering David John Lopez to pay the Board of Registered Nursing the reasonable
18 costs of the investigation and enforcement of this case, pursuant to Business and Professions
19 Code section 125.3;

20 3. Taking such other and further action as deemed necessary and proper.

21 DATED: 9/24/09


LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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